TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

HB 883 - SB 1153

March 4, 2013

SUMMARY OF BILL: Creates the "Partnership for Public Facilities and Infrastructure Act". Requires public entities responsible for development or operation of a "qualifying project", as defined by the bill, to issue guidelines prior to approving or accepting any proposals for such projects; provides minimum criteria to be included in such guidelines including financial review and analysis performed by financial and technical advisors or consultants. Creates an eleven-member committee, which meets monthly or as needed, to set model guidelines for consistent requirements for private entities seeking to participate in the construction or development of certain projects throughout the state, and members are to serve without compensation but may be reimbursed for actual expenses including travel. Requires all state agencies conducting such qualifying projects to follow the model guidelines set by the committee; any local government choosing to act under the provisions of this bill are to follow guidelines consistent with the provisions of the bill. Support staff for the committee shall be provided by the Department of General Services (DGS), the Governor's Office, the Department of Finance and Administration (F&A), the House of Representatives, the Senate, and the Office of Legal Services.

Establishes procedures and sets minimum criteria for "responsible public entities" and "private entities", as defined in the bill, to follow for the development of qualifying projects, to promote competition and guide the selection of projects by the public entity. Requires local governments acting in accordance with the provisions of the bill to provide public notice in compliance with current local laws and regulations regarding public notice. The responsible public entity may charge reasonable fees to cover costs of processing, review, and evaluating any proposal given by a private entity.

Establishes criteria to be included in all comprehensive agreements between responsible public entities and private entities, including provisions providing for a loan of public funds to the private entity to develop one or more qualifying projects. Authorizes the private and public entity to propose to utilize any and all funding resources that may be available to them and may issue debt, equity, or other security or obligations, enter into leases, access any designated trust funds, borrow or accept grants from any state infrastructure bank, and secure any financing with a pledge of security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying facility. Authorizes the private entity to take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose. Authorizes any public entity to dedicate any property interest, including land, improvements, and tangible personal property that the public entity has for public use, to the qualifying project. Authorizes the public entity to terminate the comprehensive agreement, assume the responsibilities and duties of the private entity for the qualifying project, or exercise the power of condemnation to acquire the qualifying project in the event of a "material default", as defined in the bill, by the private entity. Requires the public and private entity to comply with public meetings requirements pursuant to Title 8, Chapter 88 of Tenn. Code Annotated, and to disclose public information in the public records act pursuant to Title 10, Chapter 7 of Tenn. Code Annotated.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – Exceeds $64,300

Increase Local Expenditures – Exceeds $150,000/Permissive

Assumptions:

- According to DGS, the procurement method provided in the bill is not mandatory for state or local government.
- According to the Tennessee Higher Education Commission (THEC), the State Board of Education (SBE), the Tennessee Board of Regents (TBR), and the Tennessee Department of Education (ED), the provisions of this bill will not result in any significant fiscal impact to any of the separate agencies.
- According to F&A, due to multiple unknown variables associated with this bill, including but not limited to, how many proposals submitted for qualifying projects would require the Office of the State Architect (OSA) to review, and if the OSA would be required to draft any comprehensive agreements, an exact fiscal impact to the OSA cannot be quantified.
- According to F&A, five of the eleven members serving on the committee are from state government: the Commissioner of DGS, two members of the House of Representatives, and two members from the Senate. Members serving on the committee serve without compensation, but may be reimbursed for actual expenses including travel, which would result in an increase in state expenditures.
- The four legislative members of the committee will be reimbursed for expenses.
- According to Legislative Administration, each member of the House of Representatives and Senate is reimbursed at a rate of $173 per day per meeting and $0.47 per mile traveled; resulting in a recurring increase in state expenditures of approximately $14,260 [($173 x 4 members x 12 meetings) + (0.47 per mile x 264 round trip miles x 4 members x 12 meetings)].
- According to the Comptroller of the Treasury, as a result of multiple unknown variables, a precise impact to state and local government cannot be determined.
- The fiscal impact of this bill is dependent upon several unknown factors such as the number of public entities that will choose to use this method of procurement for public infrastructure, whether the entities involved will choose to utilize tax exempt financing or any additional funding source provided in the bill, the rate at which any funding will be borrowed, and the impact to any public entity in the event a private entity cannot

meet its financial obligation. Given the extent of unknown factors, determining a precise fiscal estimate is difficult.
- At least one state agency and a minimum of three local government entities elect to utilize the proposed procurement method.
- Given the extent of unknown factors, the recurring increase in state expenditures associated with implementing the proposed procurement methodology is reasonably estimated to exceed $50,000; as a result, the total recurring increase in state expenditures is estimated to exceed $64,260 ($14,260 + $50,000).
- The recurring increase in local government expenditures is reasonably estimated to exceed $150,000 statewide.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Lucian D. Geise, Executive Director

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